



January 13, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-0130

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131261.

The Texas Department of Transportation (the “department”) received a request for the across-the-fence value estimate by the department’s appraisers of the Union Pacific/Texas Department of Transportation transaction for the Houston-to-Katy corridor acquisition. You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of documents.¹

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to the public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contract for the property.

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

This exception is designed to protect a governmental body's planning and negotiating position in transactions involving the purchase of real or personal property for a public purpose. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Whether a particular appraisal report falls under section 552.105(2) is a question of fact. This office will accept a governmental body's good faith determination that release of an appraisal report would damage its future negotiating position, unless the contrary is clearly shown as a matter of law. *Id.* Section 552.105 excepts information pertaining to negotiations for the acquisition of real or personal property until the transaction has been completed. Open Records Decision No. 310 (1982).

You state that the release of this appraisal to the public would harm the department's negotiating position with respect to its intended purchase of the underlying fee to that portion of the railroad corridor for which the department only acquired an easement interest. Furthermore, you state that the "land is being acquired for a public purpose and no contract has been signed for the purchase." Based on your representations that the release of these appraisal reports will harm the department's current negotiating position, we conclude that the department may withhold the appraisal reports from required public disclosure under section 552.105 of the Government Code. However, once the transaction has been completed, the information may no longer be withheld, unless excepted from disclosure by some other provision of the Public Information Act. Open Records Decision No. 310 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

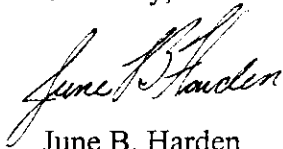
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 131261

Encl. Submitted documents

cc: Mr. Charles W. Rex, III
RMI Midwest
1200 Central Avenue, Suite 330
Wilmette, Illinois 60091
(w/o enclosures)